IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.11.2006

CORM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

and

THE HON'BLE MR. JUSTICE S. TAMILVANAN

Writ Petition No.3056 of 1999

1.R.S.S. Mani Swamigal
2.J. Karthikeyan .. Petitioners

Vs.

1. M.S. Padmanabhan
2. Mookaiah
3. Sundara Mahalingam

4. The Commissioner
   Corporation of Chennai
   Rippon Building
   Chennai 600 003.

5. The Chennai Metropolitan
   Development Authority
   No.8, Gandhi Irwin Road
   Egmore, Chennai 8. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus as stated therein.

For petitioners : Mr. C.R. Krishnamoorthy

For respondents : Mr. V. Bharathidasan for R.4
Mr. J. Ravindran for R.5

No appearance for R.1 to R.3

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioners have approached this Court to issue a writ of mandamus directing the respondents 4 and 5 to take action in order to remove the deviations in the constructions being made by

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respondents 1 to 3 in respect of Door Nos.9 to 11, Appu Street, Mylapore, Chennai 4.

2. Heard the learned counsel for the petitioner as well as the respective counsel for respondents 4 and 5.

3. Though several allegations have been made in the affidavit filed in support of the above petition, particularly against respondents 4 and 5, the counter affidavit filed by the 4th respondent, Commissioner, Corporation of Chennai shows that the first respondent herein applied for planning permission for construction of residential building for ground and first floor for four blocks and the plan was sanctioned by order dated 11.03.1998 and 09.03.1998 respectively. As per the said plan, first respondent should leave 5 feet on the northern side as set back. But, while constructing the building, the respondents 1 to 3 left only 2.6 feet, thereby deviating the sanctioned plan and also put up second floor unauthorisedly. It is further stated that in view of the same, the 4th respondent, on 06.05.1998, issued notices under Sections 236 and 256 of the Chennai City Municipal Corporation Act (in short "the Act") to stop the construction and also to remove the deviation. It is also stated that, apart from this, the 4th respondent initiated criminal proceedings against the first respondent under Section 362 of the Act in S.M.S.T.C.Nos.48 and 49 of 1999, before the XX Metropolitan Magistrate, Chennai, which was ended in conviction by order dated 22.07.2005. The counter affidavit further shows that after issuance of notice under Section 256 of the At, the State Government issued G.O.Ms.No.76 HUD dated 27.02.1999 to regularise the unauthorised construction by paying compounding fees. Under the said Scheme, the respondents 1 to 3 said to have applied for regularisation before the 5th respondent and paid the compounding fees. The same was intimated to the Corporation. It is also stated by the Commissioner that since the application furnished for regularisation is pending with 5th respondent, the Corporation did not take further action.

4. The particulars furnished by the Commissioner, Corporation of Chennai, clearly show that actions were taken then and there against respondents 1 to 3. In view of the order of the State Government in formulating a Scheme for regularising certain deviations, respondents 1 to 3 have applied for regularisation before the 5th respondent and according to the 4th respondent the said application is still pending with the 5th respondent. The learned counsel for the 5th respondent has also stated that the matter is pending with them.

5. In view of the information furnished by the 4th respondent and of the fact that the application filed for regularisation based on G.O.Ms.No.76 HUD dated 27.02.1999, is pending with 5th respondent, we are of the view that ends of justice would be met by directing the 5th respondent, CMDA to dispose of the application for regularisation said to have been made by respondents 1 to 3 in

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accordance with law within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition is disposed of with the above direction. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Commissioner
   Corporation of Chennai
   Rippon Building
   Chennai 600 003.

2. The Chennai Metropolitan
   Development Authority
   No.8, Gandhi Irwin Road
   Egmore, Chennai 8.

1 cc to Mr.C.R. Krishnamoorthy, Advocate, Sr. 56990
1 cc to Mr.V. Bharathidasan, Advocate, Sr.57544

WP.No.3056/1999

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